

SOUTH AFRICA / JUDGMENT

Kudung Communal Property Association and Others v First National Bank and Others (2023/055816) [2024]

ZAGPJHC 338 (10 April 2024)

[2024] ZAGPJHC 338

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2023/055816

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

1. REPORTABLE: No
2. OF INTEREST TO OTHER JUDGES: No
3. REVISED

10 April 2024

Case No. 2023-055816

In the matter between -

KUDUNG COMMUNAL PROPERTY ASSOCIATION (CPA no. 050866A) First Applicant PUSO FISHER N.O Second Applicant ITUMELENG PHAKE N.O. Third Applicant PALESA SIKWANE N.O. Fourth Applicant JOEL SINDANE N.O. Fifth Applicant REBECCA MATHE N.O. Sixth Applicant TEBOHO KOENANE N.O. Seventh Applicant and FIRST NATIONAL BANK First Respondent ELIJAH MOALOSI MOREMI N.O Second Respondent MARTHA MAKWATI N.O. Third Respondent MOSES RAMATHIBELA N.O. Fourth Respondent PIET RAKIETLA N.O. Fifth Respondent PEARL LETSITSI N.O. Sixth Respondent MOGOPODI MOREMI N.O. Seventh Respondent JACOB KOMANE N.O. Eighth Respondent LUCKY MOKGETHI N.O. Ninth Respondent and MONICA SOPHIE SIKWANE Applicant for leave to intervene

JUDGMENT

WILSON J:

1 The parties in this application are locked in several disputes about the management and control of the Kudung Communal Property Association (“Kudung”). Kudung is cited as the first applicant in these proceedings, and was represented by the second applicant, Ms. Fisher, before me. Ms. Fischer claimed the right to appear for Kudung under a mandate received from Kudung’s executive committee. The second to ninth respondents, who are also members of Kudung, together with the applicant for leave to intervene, Ms. Sikwane, dispute Ms. Fisher’s right to appear for Kudung. However, following the example of each of the seven Judges of this Division who have previously been seized with this matter, I granted Ms. Fisher leave to address me on behalf of the applicants for the purposes of determining the particular controversy that is presently before me.

2 On 9 June 2023 Shepstone AJ granted the applicants an order freezing Kudung’s bank account with the first respondent, FNB,

pending the election of an executive committee at an annual general meeting called for that purpose. The order was framed as a rule nisi operating as an interim interdict pending a return date. The rule nisi has been extended from time to time since it was granted. I granted the latest extension on 28 March 2024 in order to allow me to prepare this judgment.

3 However, in light of the conclusions I have reached, that extension was not strictly necessary. The extension was not necessary because, in my assessment, the matter is now moot, because the annual general meeting referred to in Shepstone AJ’s order took place on 20 January 2024. The executive committee was elected unopposed. It consists of 12 individuals, including the third applicant and the seventh and eighth respondents. The meeting was overseen, and its outcome was certified by, Nkululeko Tselane, an attorney of this court who works for Institute for Election Management Services in Africa (“IEMSA”).

4 For reasons that were never really clear, the second to ninth respondents resist this conclusion. They say that what happened on 20 January 2024 was not an annual general meeting, and that the committee elected was not an executive committee. It was instead,

they say, a task team charged with preparing for an annual general meeting that has not yet occurred.

5 However, in seeking to substantiate this position, Mr. van Schalkwyk, who appeared for the second to ninth respondents before me, could not dispute that (a) the notices convening the 20 January meeting were widely distributed, and that they referred to it as an annual general meeting; (b) that a form headed “Kudung Community CPA AGM Executive Committee Election” was prepared

and signed by, amongst others, Ms. Fisher and the seventh and eighth respondents; (c) that the IEMSA is a neutral third party and that it has certified, in a letter dated 25 January 2024, both that the annual general meeting and the election took place.

6 In the face of these documents, the authenticity of which has not been placed in dispute, Mr. van Schalkwyk was constrained to submit, based on affidavits deposed to by certain of the second to ninth respondents, that the meeting was so rowdy and disordered as to

call the validity of the annual general meeting into question, and that the seventh and eighth respondents signed the “Kudung Community CPA AGM Executive Committee Election” form in error.

7 The problem with these submissions is that, even if they turn out to be true, they do not in themselves affect the validity of the meeting or the election. They are no more than irregularities which may justify setting the meeting and election aside in due course. There is presently no application to set the meeting or the election aside. Mr. van Schalwyk chose instead to press the unsustainable conclusion that the annual general meeting and election should not be accepted as the meeting and election Shepstone AJ requires in his order. But they clearly were, and, I emphasise, the authenticity of the records that bear this out is not denied. None of this means that the legal consequences of the meeting and the election cannot be impugned, but that is something different. It is the focus of a different case, based on facts and argument that is not before me, and of which the applicants have a right to be given appropriate notice. I should point out that the majority of the individuals who were elected to Kudung’s executive committee on 20 January 2024 are not joined to these proceedings. It would obviously be inappropriate to void their election in their absence and without notice to them.

8 It follows that the conditions set in Shepstone AJ’s order have been met, that the rule nisi has run its course and that the interim interdict he granted ceased to operate on 20 January

2024. There is, accordingly, nothing to confirm or to discharge. However, the parties before me were agreed that an order that declared the status of the 20 January meeting and its consequences should be made as that will assist them to arrange their affairs accordingly.

9 Mr. van Schalkwyk also asked that, if I came to the conclusion that the 20 January meeting was an annual general meeting at which an executive committee was elected, then I ought to freeze Kundung’s bank account for a while longer in order to give the second to ninth respondents time to bring proceedings to set the meeting and the election aside. However, no case has been made out for that relief, which would operate unfairly against parties who are not before me.

10 Ms. Sikwane’s application for leave to intervene was not seriously opposed. Ms. Sikwane joins with the second to ninth respondents in seeking to impugn the validity of the 20 January meeting, on the same factual basis. Her submissions must be rejected for the reasons I have already given.

11 For all these reasons –

11.1 Monica Sophie Sikwane is granted leave to intervene in these proceedings.

11.2 It is declared that –

11.2.1 the meeting of the Kudung Communal Property Association held on 20 January 2024 was the annual general meeting required by the order of Shepstone AJ dated 9 June 2023;

11.2.2 the executive committee election held at the annual general meeting of 20 January 2024 was the executive committee election required by the order of Shepstone AJ dated 9 June 2023; and that

11.2.3 the rule nisi and interim interdict Shepstone AJ dated 9 June 2023 lapsed on 20 January 2024.

11.2.4 Each party is to pay their own costs.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 10 April 2024.

HEARD ON: 15 February and 28 March 2024

DECIDED ON: 10 April 2024

For the First and

The second applicant in person

Second Applicants:

For the Second to Ninth R van Schalkwyk

Respondents:

Serfontein Vilioen and Swatz Attorneys

For the intervener:

Mkhonto and Ngwenya Inc.

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Prepared on 12 October 2026 · Esheria